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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,586	01/29/2002	Hermann D. Funke	P-8110	5821

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EXAMINER	
EVANISKO, GEORGE ROBERT	
ART UNIT	**PAPER NUMBER**
3762	

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/059,586	FUNKE, HERMANN D.	
	Examiner	Art Unit	
	George R. Evanisko	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 December 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *22-39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *22-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 22-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The subject matter which was not described in the original specification is the method or apparatus "storing a maximum magnitude parameter to a memory location within the IMD" or "storing the maximum amplitude of the HF radiation interference signal subsequent" or upon the HF signal exceeding the threshold, in combination with the other elements in the claims. The original specification does not state that the maximum amplitude of the HF radiation interference signal is stored in memory. Although, the specification does discuss the thresholds being stored in memory. This rejection is related to new matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 22-39 are rejected under 35 U.S.C. 103(a) as obvious over Vock (EP 0931566). Vock shows in figure 2, line a, the detection of interference being a high frequency signal and states in column 3 and through out the specification that the latest 4-8 "pacing cycles" are stored and used to base the increase in pacing rate or that the pacing rate is 10% higher than the "observed intrinsic pacing rate or the actual pacing rate" and therefore provides for the claimed "adjusted stimulation rate based at least in part upon a prior range". Finally, Vock states in paragraph 27 that the interference rate must be within certain predetermined "limits" such as 160 bpm for a maximum rate, and therefore will provide a maximum and minimum rate.

In the alternative, for the detection of high frequency, the detector detecting radar or a radio transmitter, and using a minimum lower stimulation rate, Vock states that his system is used to detect an interference signal using known techniques (col 4) and the rate is within "limits" but does not specifically state that the interference signal is a HF radiation signal, the detector detecting a radar or radio transmitter, and that there is a minimum lower stimulation rate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the interference detection pacemaker as taught by Vock, with the detection of an interference signal being a HF radiation signal, the detector detecting a radar or radio transmitter, and the rate having a minimum lower stimulation rate since it was known in the art that interference detection pacemakers detect an interference signal being a HF radiation signal and the detector detecting a radar or radio transmitter in order to provide an indication to the pacemaker to change operation when a HF signal is detected to prevent interference with pacemaker signal processing, sensing, and control from electrical equipment that is widely used, such as a radar or radio transmitter, and since it was known in the art to provide a minimum

lower stimulation rate in order to provide a patient with a pacing rate that will allow the patient to function or live and/or to prevent no pacing from being delivered to the patient when the heart can not beat on its own.

In addition, Vock discloses the claimed invention except for the memory storing the maximum amplitude of the HF radiation interference signal when it surpasses the threshold. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pacing system as taught by Vock, with the memory storing the maximum amplitude of the HF radiation interference signal when it surpasses the threshold since it was known in the art that pacing systems use a memory for storing the maximum amplitude of the HF radiation interference signal when it surpasses the threshold in order that the information may later be downloaded and examined by a physician to provide valuable information for programming the sensing and response parameters of the IMD.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 22-39 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-50 of copending

Application No. 10/143392. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application's claims are more narrow and meet the limitations of this application's claims. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include in the copending application's claims a maximum and minimum stimulation range, since it was known in the art that implantable pacers include a maximum and minimum stimulation range in order to prevent the patient from being paced into a tachycardia and to provide some sort of pacing rate to the patient for the patient to function/live. Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pacing system as taught by the copending application, with the memory storing the maximum amplitude of the HF radiation interference signal when it surpasses the threshold since it was known in the art that pacing systems use a memory for storing the maximum amplitude of the HF radiation interference signal when it surpasses the threshold in order that the information may later be downloaded and examined by a physician to provide valuable information for programming the sensing and response parameters of the IMD.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment. In addition, the argument that the examiner has not provided any evidence to support the argument of obviousness is not persuasive. The references provided by the applicant and examiner in previous actions show the

claimed elements that were indicated as obvious (as was also pointed out in the detailed office action of 4/12/05). In addition, the previously cited Paul et al reference (5697958) shows the storage of the peak HF signal.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R. Evanisko whose telephone number is 571 272 4945. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571 272 4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

George R Evanisko
Primary Examiner
Art Unit 3762
2/14/6

GRE
February 14, 2006